

TENTATIVE RULINGS for CIVIL LAW and MOTION
April 16, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the tentative ruling is effective immediately. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942
Department Eleven: (530) 406-6740

TENTATIVE RULING

Case: **BRC Construction v. Travelers Cas. & Sur. Co. of America**
Case No. CV CV 04-1635

Hearing Date: **April 16, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff BRC Construction, Inc.'s motion for attorney's fees is **DENIED**. (Civ. Code, § 1717; *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3rd 1450.)

Defendant Travelers Casualty and Surety Company of America's Motion for Attorney's Fees is **DENIED**. (Civ. Code, § 1717; *Hsu v. Abbata* (1995) 9 Cal.4th 863.) In this case, plaintiff argues that both parties are the prevailing party since it won on defendant's breach of contract claims and defendant won on its claim on the payment bond. Defendant argues that it is the prevailing party on all claims. The jury entered a verdict against plaintiff and defendant on their respective claims with the Court concluding that each party takes nothing by their complaints. Applying the jury verdict to the statutory and case law cited by the parties, the Court could conclude that either both parties prevailed or neither party prevailed in this action. If the Court finds that both parties prevailed, it would be required to award attorney's fees to both parties under Civil Code section 1717 and 3250. The result of such a finding, essentially becomes a finding that the true prevailing party is the one who spends the most in attorney's fees and costs, for only that party would recover anything after the attorney's fees awards are set off. "It is fundamental that a statute should not be interpreted in a manner that would lead to absurd results." (*McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 14350, 1453.) The Court believes that such a finding would lead to absurd result. Therefore, the Court finds that neither party is the prevailing party under the circumstances of this case. (Civ. Code, §§ 1717 & 3250; *Hsu v. Abbata* (1995) 9 Cal.4th 863; *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 1450; *Winick Corp. v. Safeco Insurance Co.* (1986) 187 Cal.App.3d 1502.)

Defendant is awarded its costs in the amount of \$8,528.04. (Code Civ. Proc., § 1032; *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3rd 1450, 1455-56.)

TENTATIVE RULING

Case: **Crumley-Rebore v. Emigh**
Case No. CV PM 08-1241

Hearing Date: **April 16, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion to quash the subpoena for personal medical information is **GRANTED IN PART**. (Code Civ. Proc., §§ 1985.3, subd. (g) & 1987.1.) Defendant shall modify the subpoena deleting the request for "insurance documents."

Plaintiff's request for sanctions is **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Leach v. Regents of the University of California**
Case No. CV CV 08-2731

Hearing Date: **April 16, 2009** **Department Fifteen** **9:00 a.m.**

The parties have now had an opportunity to submit briefs in support of and in opposition to the Regents of the University of California's demurrer and motion to strike. Plaintiff fails to show that any of the bases for the Court's February 18, 2009, order is wrong as a matter of law. Accordingly, the plaintiff's motion for reconsideration is **DENIED**.

Defendant shall serve the plaintiff with notice of this order by no later than April 17, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as described herein, is required.

TENTATIVE RULING

Case: **West Coast Relocatables Inc. v. Allen L. Bender, Inc.**
Case No. CV CV 02-1427

Hearing Date: **April 16, 2009** **Department Fifteen** **9:00 a.m.**

The motion for reconsideration by Washington Unified School District ("WUSD") is **DENIED**. In an action against a public entity, it is sufficient to allege that the plaintiff duly presented a claim against the public entity. (4 Witkin, Cal. Proc. (5th ed. 2008) Pleading, § 388, p. 527.) Allen L. Bender, Inc.'s second amended complaint against WUSD alleges compliance or substantial compliance with the Government Claims Act. WUSD fails to cite any authority in

support of the proposition that Allen L. Bender, Inc. is required to plead every fact showing its compliance with the Government Claims Act.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Christopher-Miles v. Adams**
Case No. CV CV 08-2503

Hearing Date: **April 16, 2009** **Department Eleven** **9:00 a.m.**

Plaintiff's motion to quash the subpoena for personal medical information is **GRANTED**. (Code Civ. Proc., §§ 1985.3, subd. (g) & 1987.1.) Defendants' deposition subpoenas are overbroad and oppressive. (*Britt v. Superior Court* (1978) 20 Cal.3d 844.)

Plaintiff's request for sanctions is **GRANTED**. (Code Civ. Proc., § 1987.2, subd. (a).) Defendants shall pay plaintiff \$790.00 by April 30, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.